

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the Telecommunications)
Act of 1996)

CC Docket No. 96-128

File No. NSD-L-99-34

REPLY COMMENTS OF THE
AMERICAN PUBLIC COMMUNICATIONS COUNCIL
ON PETITIONS FOR RECONSIDERATION/CLARIFICATION

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SUMMARY

The principles of the consensus rule attached to the American Public Communications Council's ("APCC's") comments are supported by AT&T, WorldCom, and in large part by the RBOC Payphone Coalition. With strong support from both the carrier and payphone service provider ("PSP") communities, the Commission can be confident that this proposed rule reasonably balances the legitimate interests of compensation payers and payees. The rule also accommodates switch-based resellers by allowing alternative approaches to compensation tracking, while providing appropriate safeguards against the well-documented problems that flow from reseller participation in the compensation process.

There is no merit to resellers' arguments in opposition to allowing interexchange carriers ("IXCs") to *elect* to pay compensation for calls for which they receive answer supervision from reseller switches. Section 276 entitles PSPs to compensation for every completed call, but allows the FCC latitude in defining how, and by whom, such compensation is paid. FCC precedents on whether a call routed through a call processing platform is "one call" or "two calls" for various regulatory purposes are inapposite here. Here, the question is whether a call that terminates to a reseller switch and for which the IXC receives answer supervision may be treated as a completed call for purposes of payphone compensation. There is ample precedent in the fact that such calls already may be treated as complete for purposes of the IXC billing the reseller. In a competitive long distance market, where IXCs and resellers may choose from a number of alternative approaches to payphone compensation, it is clearly reasonable for the FCC to allow one of

those alternatives to be payment of compensation for all calls for which an IXC receives answer supervision.

APCC strongly opposes any relaxation of the reporting requirements applicable when resellers are involved in tracking calls. The virtually uniform experience of PSPs with resellers under the compensation system is that resellers cannot be relied upon to accurately track completed calls. The information to be reported under the consensus rule is the minimum necessary for PSPs to adequately audit the accuracy of compensation payments.

The provisions of the consensus rule strike a reasonable balance in allowing direct reseller-PSP payment arrangements subject to appropriate safeguards.

As no party opposes Bulletins request for clarification of local exchange carriers' ("LECs") payment obligations, the Commission should grant that clarification with the modifications suggested by APCC.

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ON PETITIONS FOR RECONSIDERATION/CLARIFICATION

The American Public Communications Council ("APCC") hereby replies to comments on the pending petitions for reconsideration and/or clarification¹ of the Commission's Second Order on Reconsideration in the above-captioned docket. *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Second Order on Reconsideration, 2001 FCC LEXIS 1917 (rel. April 5, 2001) ("*Order*").²

¹ AT&T Petition for Clarification and/or Reconsideration, filed May 29, 2001 ("AT&T Pet."); Bulletins, Petition for Clarification, filed April 16, 2001 ("Bulletins Pet."); Global Crossing Telecommunications, Inc., Petition for Reconsideration and Clarification, filed May 29, 2001 ("Global Pet."); WorldCom, Inc., Petition for Declaratory Ruling and Petition for Reconsideration, filed May 29, 2001 ("WorldCom Pet.").

² See also *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 20541 (1996) ("*First Payphone Order*"), recon., 11 FCC Rcd at 21233 (1996) ("*First Reconsideration Order*"), affirmed in part and vacated in part *Illinois Public Telecom. Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997). Comments were submitted by APCC, Bulletins, Flying J, the RBOC Payphone Coalition, AT&T, Global Crossing, Qwest, WorldCom, ASCENT, IPCA, CenturyTel Long Distance, CommuniGroup of K.C., Inc., *et al.*, IDT

I. THE COMMISSION SHOULD ADOPT THE RULE JOINTLY PROPOSED BY PSPS AND IXCS

As explained in APCC's comments on the petitions, APCC and other parties have participated in discussions and have reached consensus on principles in this area that balance the needs of payphone service providers ("PSPs") for fair compensation and effective auditing information with the cost and efficiency concerns of carriers raised in the petitions for reconsideration and/or clarification. Under the draft rule attached to APCC's comments, the principles of which are supported fully by AT&T and WorldCom,³ and in large part by the RBOC Payphone Coalition,⁴ carriers would have a range of payment options with call detail requirements coordinated with the level of responsibility assumed for payment by IXCs or resellers.

To recapitulate the draft rule, Subsection 64.1310(a)(2) of the draft amendments would apply reduced reporting requirements to calls that can be tracked to completion within the IXC's own network. For those calls, IXCs would be required to disclose, for each payphone, the monthly volumes of calls, and the percentages of calls completed, in each of four categories: (1) subscriber toll-free calls; (2) prepaid card calls terminated by the IXC's facilities; (3) 0+ and 101XXXX-0+ calls terminated by the IXC's facilities; and (4)

Corporation, Intellicall Operator Services, Inc., Network Enhanced Telecom, LLP (NET), One Call Communications, Inc., and VarTec Telecom, Inc.

³ WorldCom fully supports the text of the rule. WorldCom at 7. AT&T states: "Based upon its most recent discussions with APCC representatives, AT&T generally supports the concepts in this proposal as a reasonable means of accommodating all parties' legitimate interests." AT&T at 4.

⁴ The RBOC Coalition supports reduced reporting requirements for calls that are not routed to resellers and calls that are treated by IXCs as complete when handed off to resellers.

other access code calls terminated by the IXC's facilities. The problems of collecting compensation are not as overwhelming when a facilities-based carrier handles all call tracking responsibilities, as when those responsibilities are shared with resellers. Therefore, the proposed rule would require for such calls a lower level of call detail that still ensures a basic capability for PSPs to review and audit IXC payments.

The consensus rule amendment attached to APCC's comments omitted to address one point that APCC believes was included in the statement of principles agreed to by the parties. In order to ensure that PSPs can match calls to the appropriate call categories, Section 64.1310(a)(2) of the proposed rule amendment should include a statement that "the IXC will provide the PSP with a list of the IXCs' access code numbers and a list of the IXCs' prepaid card calling numbers." A revised proposed rule is attached as Attachment 1.

Subsection (a)(3) of the rule would allow facilities-based carriers flexibility by giving them a choice of approaches to compensation of calls routed to switch-based resellers. If the IXC chooses to treat all calls completed to the reseller's switch as complete for purposes of compensation, then the reduced reporting requirements of Subsection (a)(2) would apply. The rule would specifically authorize the IXC to treat reseller calls as completed and apply reduced reporting requirements *only if* the IXC receives answer supervision for such calls. Accordingly, the consensus rule amendment avoids creating incentives for IXCs to assess payphone surcharges on calls that are not billable to the reseller. *See* note 9, below.

If the IXC chooses to arrange with the reseller for tracking of calls to completion, then a higher level of call detail would apply, reflecting the significantly greater risks of compensation collection problems arising under that approach. The IXC must (1) identify to each PSP the resellers involved and their telephone numbers, (2) provide the PSP, with the compensation payment, the volumes of calls for each number, received from each of the

PSP's payphones, and (3) provide the PSP the volumes of calls for which answer supervision was received, for each of the reseller's numbers, that originated from each of the PSP's payphones.

The draft rule also provides flexibility to resellers, permitting the reseller, to establish its own compensation payment arrangements with PSPs. The rule would provide protections to (1) eliminate any confusion or dispute as to the party responsible for payment, (2) ensure that resellers undertaking to pay compensation have a sufficient tracking and payment system, and (3) ensure that a PSP that consents to payment by the reseller will receive the same level of call detail as otherwise required by the rule.

With strong support from both the carrier and PSP communities, the Commission can be confident that this proposed rule reasonably balances the legitimate interests of compensation payers and payees. The proposed rule also makes reasonable accommodation to switch-based resellers' legitimate need for choices, while providing appropriate safeguards against the well-documented problems that flow from reseller participation in the compensation process.

In the remaining portions of these reply comments, APCC specifically rebuts the objections raised by resellers to the IXC proposals – and the additional arguments raised by resellers – to the extent those objections and arguments are relevant to the consensus rule.

II. IXCs SHOULD BE ALLOWED TO ELECT TO TREAT CALLS COMPLETED TO RESELLERS' SWITCHES AS COMPENSABLE CALLS

In their comments on the IXCs' petitions for reconsideration/clarification, resellers argue that facilities-based interexchange carriers ("IXCs")⁵ should not be allowed to *elect* to pay compensation for calls that are handed off to switch-based resellers. (ASCENT at 6-13; IPCA at 5-7; CenturyTel at 2-6; Flying J at 12-13; IDT at 31-40; Intellicall at 3-5; One Call at 4-6; Global Crossing at 2-5). Resellers make a number of arguments on this point, none of which have merit.

As an initial matter, in all their arguments the resellers gloss over a key distinction. They do not straightforwardly address the critical difference between a rule that would *require* IXCs to pay compensation for calls for which answer supervision is detected in their networks, and the type of rule jointly advocated by APCC, AT&T, WorldCom and the RBOC Coalition, which would *allow* an IXC to *elect* to pay compensation for such calls as the IXC's way of fulfilling its payphone compensation obligations.⁶ Accordingly, most of their arguments fail for the simple reason that this Commission has declared the long distance market to be competitive and has accordingly deregulated the IXCs as to their charges and practices vis-à-vis resellers. *Policy and Rules Concerning the Interstate Interexchange Marketplace, Second Report and Order*, 11 FCC Rcd 20,730 (1996). The relationships between IXCs and resellers are governed today by contract, not tariff. No

⁵ For simplicity, the abbreviation "IXC" is used in these reply comments and in the attached draft rule to mean the first facilities-based IXC.

⁶ APCC believes that the Commission could, consistently with Section 276, adopt a rule requiring compensation payments for calls generating answer supervision from reseller switches. However, it is unnecessary for the Commission to address that issue in order to adopt APCC's proposed rule amendment.

reseller has made a convincing showing in this proceeding that it lacks the ability to shop in the marketplace for a different IXC, if dissatisfied with the charges and practices of its current suppliers.

A. An IXC electing to pay compensation for all calls for which answer supervision is recorded does not violate Section 276 of the Act

Some resellers argue that Section 276 of the Act, 47 U.S.C. § 276, prohibits an IXC from electing to compensate PSPs for all calls for which the IXC receives answer supervision from a reseller switch. ASCENT; IPCA at 7; IDT at 133-34. Section 276 requires the Commission, in order to “promote payphone competition and the widespread deployment of payphones” (*id.*, § 276(b)), to “ensure that payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone” (*id.*, § 276(b)(1)(A)).

By this provision, Congress established PSPs’ right to be fairly compensated for completed calls, but it gave the FCC latitude in defining how, and by whom, such compensation is paid. Nothing in this provision prohibits the Commission from adopting a rule that promotes an efficient compensation scheme by allowing IXCs limited flexibility in identifying completed calls for purposes of payphone compensation.⁷ Indeed, the entire focus of this provision is on ensuring that PSPs obtain *enough* compensation to promote

⁷ As an example, the compensation rule has allowed IXCs and PSPs to determine the terms of compensation by contract. 47 CFR § 64.1300(a). It would be absurd to suggest that such contractual compensation arrangements could not provide for payments for all calls for which the IXC receives answer supervision. The consensus rule merely allows IXCs to elect, on their own, the same payment approach that they may currently adopt pursuant to an agreement with the PSP. Only the PSPs should have standing to oppose such a change, and there is no credible showing that such a change will harm PSPs.

payphone competition and deployment. Permitting IXC's to compensate PSPs for calls delivered to reseller switches would not undermine either of these Congressional objectives.

B. IXC election to compensate PSPs for calls handed off to resellers is consistent with FCC precedent

ASCENT and others also contend that allowing IXC's to treat calls for which they receive answer supervision from the reseller's switch as completed calls would violate various FCC precedents in other areas.⁸ Resellers cite the following cases: (1) *Teleconnect Co. v. Bell Telephone Company of Pennsylvania*, 10 FCC Rcd 1626 (1995); (2) *Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corporation*, 7 FCC Rcd 1619 (1992); (3) *Southwestern Bell Telephone Company*, 3 FCC Rcd 2339 (1988); and (4) *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 14 FCC Rcd 3689 (1999). ASCENT at 7-9.

While this list of cases looks impressive, there is no substance under the surface: none of the cases is apposite here. First, to the extent that these cases address the permissible charging practices of carriers, they deal with regulated LECs, not IXC's. Second, these cases all deal with a different subject: whether a call that is routed to one location and *is then routed on and terminated* to another location should be treated for various regulatory purposes *as one call or two*. That is not the issue here – there is no question as to how many calls are involved. Instead, the question is whether a call that

⁸ ASCENT argues that the FCC may not allow IXC's to elect to pay for all calls for which they receive answer supervision without conducting a rulemaking. APCC believes that IXC's are allowed to pay for such calls today, if they wish. But even if they were not, this is a rulemaking proceeding and such a determination is well within the scope of the issues addressed in the *Second Order on Reconsideration* that is currently under review.

generates answer supervision at one location and *could be but is not* terminated to a second location may be treated – if the carrier handling the call so chooses – *as a completed call*. This is a quite different issue. The question is not whether IXCs should compensate PSPs *twice* for reseller calls completed to a called party, it is whether IXCs may choose to compensate PSPs *once* for reseller calls that generate answer supervision to the IXC.

In fact, calls for which answer supervision is registered in the IXC's network *may be and are* treated *by IXCs* as completed for billing purposes, regardless of whether they are completed to an ultimate called party.⁹ If an IXC is allowed to treat such calls as completed for purposes of assessing toll-free service charges on its reseller customers, then it should be able to treat calls as completed for purposes of assessing payphone surcharges on those same customers. And if the IXC can treat calls as completed for purposes of *assessing* charges on customers, then *a fortiori* an IXC is allowed to elect to treat them as completed for purposes of *paying* compensation to PSPs.

⁹ See Flying J at 4, n. 2. Cf. ASCENT at 11 (“As the Commission has previously acknowledged, it would ‘not be equitable’ . . . to require the compensation of PSPs ‘for calls that generated no revenues’”)(*quoting Policies and Rules Concerning Operator Service Access and Payphone Compensation*, 6 FCC Rcd 4736, ¶37 (1991)); IPCA at 7 (“it has been the Commission’s policy . . . that PSP compensation obligations should only apply to those who reap economic benefit from payphone calls”). Here, the calls in question – calls for which the IXC receives answer supervision – do generate toll-free service charge revenues for the carrier that is required to compensate the PSP. Therefore, the question whether such charges are consistent with “standard industry practice not to charge for either busy or unanswered calls” (ASCENT at 11) has already been answered in the affirmative. As far as a “legitimate cost basis” is concerned, AT&T and WorldCom have already explained that the need to develop new systems to determine whether calls handed off to resellers are ultimately completed generates substantial administrative costs attributable to this category of calls. The FCC has no reason to doubt that substantial costs of this nature are incurred. No further “cost basis” showing is required to support permitting IXCs to elect to pay for all calls for which they receive answer supervision. And in any event, if this option does turn out to be excessively costly, carriers and resellers may select one of the other alternatives offered by the consensus rule.

C. IXC election to pay for all calls for which answer supervision is received comports with Section 202 of the Act

There is no merit to resellers' contentions (ASCENT at 12-13; IPCA at 6) that IXCs unjustly discriminate against them by electing to pay for all calls for which the IXC receives answer supervision. As noted above, there is no reason to dispute that (1) IXCs incur substantial administrative costs, as well as potential liability, in trying to determine whether calls terminated to reseller switches were completed to an ultimate called party, and (2) IXCs do not incur such costs when terminating calls to their own end user customers or to resellers where answer supervision is generated by termination to the reseller's end user customer and not by the reseller switch. Accordingly, it is entirely reasonable for IXCs to treat these two types of calls "differently."¹⁰

It is certainly reasonable for the Commission to let IXCs operating in a highly competitive market make an election about how to treat reseller calls. If it turns out some IXCs have overestimated the costs involved in trying to obtain accurate call completion determinations from resellers, then other IXCs who have correctly calculated those costs will certainly step in to address the issue.¹¹

The resellers' claims of discrimination are undermined by some resellers' recognition that IXCs frequently can and do receive answer supervision for reseller-handled toll-free

¹⁰ In fact, in a relevant sense the IXCs are treating both types of calls the same, by paying compensation whenever they receive an answer supervision signal indicating that the call is billable *by the IXC*.

¹¹ IPCA requests the Commission to rule that "IXCs may not bill resellers for payphone compensation charges in advance of, or more frequently than, their own obligation to pay PSPs." IPCA at 8-9. This is an interesting principle for IPCA to espouse, given that its members' businesses are founded on prepayment by their customers in advance of any obligation to pay their suppliers.

calls completed to end users, through the SS7 system. Communigroup *et al.* at 7-12; NET at 4-5; VarTec at 3. These resellers assert that there are two types of calls routed to switch based resellers. One kind of call is resold subscriber 800 calls, where facilities-based IXC's *do not* receive answer supervision when the call is handed off to the reseller, and *do* receive answer supervision when the call is answered by the ultimate called party. With this type of call, which Communigroup *et al.* allege is the most common type of reseller call, the problems feared by resellers simply will not arise. Under APCC's rule, IXC's can pay compensation for all calls for which they receive answer supervision, but the calls for which IXC's will receive answer supervision will be only those calls completed to the 800 service subscriber, *i.e.*, the ultimate called party.

The other type of call is the prepaid card (or other calling card) call, where the call reaches the reseller's platform. Communigroup *et al.* admit that with this type of call, "the prepaid calling card platform may return an ANM signal or the Answer Off-Hook when the calling party reaches that platform" so that "the facilities-based IXC cannot alone determine call completion." Communigroup *et al.* at 10. Communigroup claims that this type of situation is an "isolated scenario" (*id.*), but it is exactly the type of reseller call that is prevalent at payphones, where payphone coin collectors routinely must clean up used prepaid cards that litter the ground around the payphone enclosures. And it is *exactly* the type of call for which PSPs have been most consistently unable to collect compensation due to the almost uniform evasions by prepaid card providers of their call tracking responsibilities.

D. Allowing carrier election will not overcompensate PSPs

Global Crossing argues that allowing carriers to elect to treat calls to resellers as completed will lead to overcompensation of PSPs. Global Crossing at 3-4. As Bulletins

points out, however, that is not necessarily the case. Prepaid calling card platforms are well known to allow chain dialing, and the number of such chain dialed calls, which would not generate answer supervision to the IXC, may well offset the number of unanswered prepaid card calls.

But in any event, the consensus rule provides IXCs and resellers with ample choices to enable them to avoid any “overcompensation” to the extent that such “overcompensation” appears to be significant. For resellers that carry an unusually large number of unanswered calls, it might turn out to be more economical for the reseller and its IXC to arrange to track calls to completion to the end user, despite the additional tracking and reporting costs involved, pursuant to Section 64.1310(a)(3) of the consensus rule. Alternatively, a reseller with an unusually large number of unanswered calls could choose to enter direct payment agreements with PSPs, pursuant to Section 64.1312(a)(4) of the consensus rule.

Presubscribed operator service providers (“OSPs”) such as One Call Communications, which handles presubscribed calls that are routed to it from payphones as access code calls, have additional options to address any overcompensation issues that may arise in their particular circumstances. Given that such OSPs already have established contractual relationships with their PSP clients, OSPs can adjust the language of their contracts with PSPs to reflect any of the options permitted by the consensus rule. For example, One Call could revise its contracts with PSPs to ensure that the amount of any payments by an IXC to a PSP for calls routed to One Call are deducted from One Call’s commission payments to the PSP. The availability of such marketplace options under the proposed consensus rule adequately addresses the concerns of One Call and other resellers with unusual patterns of unanswered calls.

III. ANY MODIFICATION OF THE REPORTING REQUIREMENTS MUST BE CAREFULLY CRAFTED

A. The reporting requirements are reasonable and fully justified

As noted above, AT&T and WorldCom, as well as the RBOCs, agree with APCC on principles for modifying the reporting requirements. Under the consensus proposal, reporting requirements are calibrated according to the degree of need – which varies depending on whether only the IXC, or the IXC and the reseller, is involved in the call tracking process. Where an IXC undertakes to track the call alone and to consider it complete when answer supervision is generated in the IXC's own network, reporting requirements may reasonably be reduced. However, where the IXC and reseller have agreed that both will be involved in tracking a call, the risk of undercompensation is substantially higher, and the consensus proposal accordingly applies the full reporting requirements previously adopted by the Commission.

APCC strongly opposes reseller proposals to relax the reporting requirements in situations where resellers continue to be involved in tracking calls. *See* Comments of ASCENT at 15-17; CenturyTel at 7-8; IDT at 18-19, 20-22; VarTec at 5. As explained in APCC's comments, the Commission amply justified, based on record evidence, the need for payphone service providers ("PSPs") to obtain call detail from the facilities-based carriers to whom the calls are routed. The information involved is information that resellers should have been collecting (but in most cases have avoided collecting) for the last four years in order to satisfy their previous dial-around compensation payment obligations. Under the rule adopted in the *First Reconsideration Order*, as the Commission found, all parties involved in the call are able to obtain call detail *except* the payphone service provider ("PSP"). *Order*, ¶12. Obtaining this information is especially critical where calls are

routed to resellers, and payment is based on whether the call is completed to the reseller's customer. *See, e.g.*, Comments of APCC, May 17, 1999, at 3.¹²

The Commission should accord no credibility to statements by resellers regarding their ability to track calls.¹³ As APCC's comments explained, the virtually uniform experience of PSPs with resellers under the compensation system is that resellers cannot be relied upon to accurately track completed calls. Indeed, the resellers have a miserable track record in terms of their compliance with dial-around compensation rules. Where resellers have identified themselves to their carriers as being responsible for paying dial-around, fewer than half of those resellers actually have been making dial-around payments. Most of the resellers that actually pay some compensation are doing so only as a result of demand letters followed by threats of litigation and the filing of lawsuits to force them to comply with the Commission's rules.

To the extent that carriers continue to rely upon resellers for critical information about call completion, the same pattern of evasion and non-compliance can be expected, thereby maintaining a fundamental weakness in the compensation system. It is absolutely critical for PSPs to have fully detailed information about calls routed to resellers, if those calls continue to be paid based on reseller determinations of call completion.

¹² Also attached are relevant excerpts from APCC's opposition to Sprint's motion for a stay of the Commission's *Order*, filed in the U.S. court of appeals. *See* Attachment 2.

¹³ IPCA states that a third-party clearinghouse "system is widely used . . . especially by IPCA members, and has provided a reliable means of administering . . . PSP compensation." IPCA at 10. In fact, IPCA members have been among the most unreliable and blatantly irresponsible participants in the payphone compensation system. For this reason, the Commission should reject the use of call-completion percentages or other surrogates that are based on data supplied by resellers.

IV. DIRECT RESELLER-PSP PAYMENT ARRANGEMENTS SHOULD BE PERMITTED SUBJECT TO SAFEGUARDS

There is disagreement among the parties on whether direct reseller-PSP payment arrangements should be disallowed. A number of resellers oppose the restrictions advocated in Global Crossing's petition. *See* Comments of IPCA at 6-7; Communigroup *et al.* at 15; IDT at 44-48; NET at 8-9; One Call at 6-7. The proposed consensus rule strikes a reasonable balance on this issue between the interests in allowing options for resellers and in protecting PSPs and IXC's. The rule addresses the complexity of payment administration issues by establishing minimum tracking and reporting standards. By establishing such minimum standards, the FCC will minimize unnecessary payment disputes and help ensure that market decisions are made on the basis of full information about reseller capabilities.

V. OTHER MATTERS

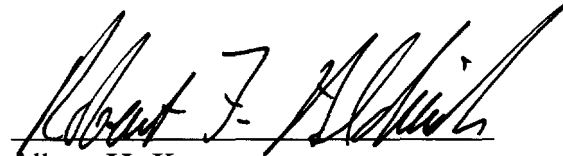
Two parties (APCC at 11-12; Flying J at 22) support, and no parties oppose, the proposal of Bulletins to clarify that LECs must pay compensation for calls completed on their networks. The Commission should grant Bulletins' request for clarification by adopting the modified language suggested by APCC.

CONCLUSION

In accordance with the foregoing reply comments, the Commission should grant in part and deny in part the pending petitions for reconsideration.

Dated: October 22, 2001

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert F. Aldrich", is written over a horizontal line.

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Attachment 1

Proposed Amendments to
The Compensation Rule

Section 64.1300

- (a) Except as provided herein, the first facilities-based interexchange carrier to which a completed coinless access code or subscriber toll-free payphone call is delivered by the local exchange carrier shall compensate the payphone service provider for the call at a rate agreed upon by the parties by contract.
- (b) The compensation obligation set forth herein shall not apply to calls to emergency numbers, calls by hearing disabled persons to a telecommunications relay service or local calls for which the caller has made the required coin deposit.
- (c) In the absence of an agreement as required by paragraph (a) of this section, the carrier is obligated to compensate the payphone service provider at a per-call rate of \$.24.

Section 64.1310

(a)(1) Except as provided in Section 64.1310(a)(4), it is the responsibility of the first facilities-based interexchange carrier ("IXC") to which a compensable coinless access code or subscriber toll-free payphone call is delivered by the local exchange carrier to track, or arrange for the tracking of, each such call so that it may accurately compute the compensation required by Section 64.1300(a). ~~The first facilities-based interexchange carrier to which a compensable coinless payphone call is delivered by the local exchange carrier must also send back to each payphone service provider at the time dial-around compensation is due to be paid a statement in computer readable format indicating the toll-free and access code numbers that the LEC has delivered to the carrier, and the volume of calls for each toll free and access number each carrier has received from each of that payphone service provider's payphones, unless the payphone service provider agrees to other arrangements.~~

(2) For all toll-free and access code calls other than calls terminated by the IXC to a reseller's switch, the IXC must provide to each payphone service provider ("PSP"), at the time dial-around compensation is due to be paid, a statement in computer readable format indicating the volumes of compensated calls originating from each of the PSP's payphones, for each month covered by such payment, classified in the following categories:

- (A) subscriber toll-free calls;
- (B) prepaid card calls terminated by the IXC's facilities;
- (C) 0+ and 101XXXX-0+ calls terminated by the IXC's facilities; and
- (D) other access code calls terminated by the IXC's facilities.

The IXC will provide the PSP with a list of the IXCs' access code numbers and a list of the IXCs' prepaid card calling numbers. The IXC also will report to PSPs, quarterly, within 30 days of the end of the quarter for which the report is issued, the average call completion

percentage for calls in each category. If feasible, this information shall be based on calls originating from payphones in each quarter. The IXC will arrange a third party annual review of their payphone compensation systems and processes and the system and process for determining completion rates for the above categories of calls.

(3) For toll-free and access code calls that the IXC terminates to a reseller's switch, except as provided in Section 64.1310(a)(4), the IXC must implement its compensation obligations, with respect to all calls terminated to a particular reseller, in accordance with either paragraph (A) or paragraph (B) immediately following.

(A) The IXC must compensate PSPs for all toll-free and access code calls for which answer supervision is received in the IXC's network, from whatever source, without regard to whether or not such calls are completed to the called party. The IXC must classify such calls as falling within Section 64.1310(a)(2)(A), and must provide to each PSP the same information required by Section 64.1310(a)(2); or

(B) By agreement with the reseller, the IXC may compensate PSPs only for toll-free and access code calls that are completed to the called party. Upon execution of the agreement with the reseller, the IXC must identify to each PSP the name and address of that reseller and the toll-free and access code numbers that are covered by the IXC's agreement with the reseller. The IXC must obtain from the reseller a data feed showing all compensable calls, and must provide to each PSP, at the time dial-around compensation is due to be paid, a statement in computer readable format indicating the volumes of compensable calls, for each of the reseller's toll-free and access code numbers, that originated from each of the PSP's payphones. Additionally, the IXC must provide to each PSP, at the time dial-around compensation is due to be paid, a statement in computer readable format indicating the volumes of calls for which answer supervision was received in the IXC's network, for each of the reseller's toll-free and access code numbers, that were delivered from each of the PSP's payphones.

(4) If the switch based reseller has agreed with the PSP and the IXC, respectively, that the reseller shall compensate the PSP for all compensable calls terminated to the reseller's switch, then the IXC is not required to compensate the PSP for calls terminated to that reseller. The compensation obligations of the parties shall be as specified in such agreements, provided, however, that:

(A) The reseller's agreement with the PSP must expressly provide that the PSP agrees to accept compensation from the reseller and that the IXC, as a third party beneficiary, is released from all payment obligation; and

(B) Unless explicitly provided otherwise in the PSP's agreement with the reseller:

(i) The reseller must have, and must make available to the PSP, documentation substantiating the reseller's ability to track, and compensate the PSP for, compensable calls;

(ii) The reseller must provide to the PSP, at the time dial-around compensation is due to be paid, a statement in computer readable format identifying the reseller's toll-free and access code numbers and indicating the volumes of compensable calls, for each of the reseller's toll-free and access code numbers, that originated from each of the PSP's payphones;

(iii) The IXC must provide to the reseller, and the reseller must forward to the PSP, at the time dial-around compensation is due to be paid, a statement in computer readable format indicating the volume of calls for which answer supervision was received in the IXC's network, for each of the reseller's toll-free and access code numbers that were delivered from each of the PSP's payphones.

(b) The first facilities-based interexchange carrier to which a compensable coinless payphone call is delivered by the local exchange carrier may obtain reimbursement from its reseller and debit card customers for the compensation amounts paid to payphone service providers for calls carried on their account and for the cost of tracking compensable calls. Facilities-based carriers and resellers may establish or continue any other arrangements that they have with payphone service providers for the billing and collection of compensation for calls subject to Section 64.1300(a), if the involved payphone service providers so agree.

(c) Local Exchange Carriers must provide to carriers required to pay compensation pursuant to Section 64.1300(a) a list of payphone numbers in their service areas. The list must be provided on a quarterly basis. Local Exchange Carriers must verify disputed numbers in a timely manner, and must maintain verification data for 18 months after close of the compensation period.

(d) Local Exchange Carriers must respond to all carrier requests for payphone number verification in connection with the compensation requirements herein, even if such verification is a negative response.

(e) A payphone service provider that seeks compensation for payphones that are not included on the Local Exchange Carrier's list satisfies its obligation to provide alternative reasonable verification to a payor carrier if it provides to that carrier: (1) A notarized affidavit attesting that each of the payphones for which the payphone service provider seeks compensation is a payphone that was in working order as of the last day of the compensation period; and (2) Corroborating evidence that each such payphone is owned by the payphone service provider seeking compensation and was in working order on the last day of the compensation period. Corroborating evidence shall include, at a minimum,

the telephone bill for the last month of the billing quarter indicating use of a line screening service.

Attachment 2

Excerpts from Opposition of the
American Public Communications Council
to Sprint Corporation's Motion
for a Stay Pending Review

filed in the United States Court of Appeals
for the District of Columbia Circuit

June 22, 2001

The District Court agreed with Sprint and referred four issues, including the issue of payment responsibility to the FCC.²² Thereafter, Flying J filed a Petition for Expedited Declaratory Ruling with the Commission, and in mid-2000, the Commission requested and received comments and reply comments from numerous parties, including Sprint.²³

As Sprint itself claimed, “the FCC has developed extensive familiarity” with the payment responsibility issue, and was considering a change in the assignment of such responsibility. Sprint cannot now complain if it misread the regulatory waters, incorrectly anticipated how the FCC would act, and consequently submitted comments that did not address issues that it now believes to be significant. *Shalala*, 120 F.Supp.2d at 41.

C. The Record Supports the FCC Order

Contrary to Sprint’s claim, there is abundant record support for the Commission’s modification of its rules. Numerous submissions attest to the enormous difficulties involved in the current practice of allowing responsibility for payment to be assumed by the reseller that ultimately completes a payphone call to its final destination.²⁴ And a wealth of

²² See *Flying J, Inc. v. Sprint Communications Co., L.P.*, Case No. 1:99 CV 111 ST (D. Utah) (Order Jan. 10, 2000) , appended as Exhibit 12 hereto.

²³ Sprint’s Comments and Reply Comments in the Flying J proceeding at the FCC are appended as Exhibit 13 and 14, respectively, hereto. In both documents, Sprint took the opportunity to strenuously argue its position that switch-based resellers and not IXC’s should be obligated to pay dial around compensation directly to PSPs.

²⁴ See, e.g., RBOC Petition at 2 (compensation from major carriers is 20-50+% less than expected); Comments of APCC, May 17, 1999, at 3 (IXC’s generally have provided no information to PSPs about calls routed to resellers), 4 (IXC’s classify customers as resellers without actual inquiry to the customer), 5 (73 of 1,200 carriers invoiced by APCC Services paid any compensation; IXC’s acknowledge they do not pay for 20-25% of payphone calls because the calls are routed to “switch-based” resellers); RBOC Reply Comments of the RBOC/GTE/SNET Payphone Coalition, June 1, 1999, at 5-6 (compensation shortfall is 22-30% of expected revenue; less than 10% of carriers invoiced

evidence shows the harmful impact that uncollected compensation is having on the ability of PSPs to maintain wide deployment of payphones pursuant to Section 276, and on the ability of people in need to find and use payphones. “Supporting Public Access For Everyone: Finishing Implementation of Section 276 of the Telecommunications Act,” ex parte presentation submitted by APCC, December 13, 2000 (“Supporting Public Access”).

Sprint cannot dispute this abundant record. Instead, Sprint tries to identify particular issues that the FCC allegedly misjudged. This effort is utterly unpersuasive.

First, Sprint argues that the Commission did not adequately consider the ability of carriers to recover their compliance costs within the six-months transition period.²⁵ In fact, the *Second Payphone Reconsideration Order* expressly provided that IXCs “may recover from their reseller customers the expense of payphone per-call compensation and the cost of tracking compensable calls by negotiating reimbursement terms in future contract provisions.” *Second Payphone Reconsideration Order*, ¶18. Further, carriers are free to recover their compensation payments in other ways, *e.g.*, by means of general rate increases.

for compensation make any payment); Letter from Robert F. Aldrich to Magalie Roman Salas, July 28, 2000, at 5 (Large PSP has collected compensation on only 52% of completed calls routed to AT&T, MCI Worldcom, and Sprint; “Narrative to Accompany ‘Call and Dollar Flow in Dial Around Calls from Payphones’” (“APCC Narrative”), ex parte presentation submitted by APCC November 15, 2000, at 5 (“The PSP is not provided by any IXC with a list of calls the IXC is paying for”).

²⁵ Sprint Motion at 11-12, 14. Sprint offers no plausible reason why it should take IXCs as long to adapt their existing call tracking system as to build a payphone call tracking system from scratch. If Sprint believes that the transition period is inadequate to permit it to develop appropriate cost recovery arrangements by revising its contracts with resellers or otherwise, the appropriate procedure is for Sprint to raise such issues in the form of a petition for reconsideration or petition for waiver.

Given that IXC's have been almost completely deregulated by the FCC, six or eight months offer ample time for IXC's to implement cost recovery plans in the manner they deem most appropriate. In any event, the record fully supported the FCC's finding that, whatever the imperfections of their particular cost recovery method, the IXC's are better positioned than PSPs to collect payments from resellers.

Sprint also contends that it is not currently able to determine which of the calls sent to resellers are completed, and that it must make arrangements to do so in order to comply with the Commission's rules. Sprint Motion at 11-12. But the record shows that there are a number of alternatives for addressing the completed calls issue, short of the costly network and contractual changes that Sprint alleges would be required to make a particularized determination of completion for each payphone call routed to a reseller.²⁶ Thus, IXC's have ample opportunities to ensure compliance with the Commission's order, well within the prescribed transition period.

The record also directly supports the Commission's determination that IXC's must provide PSPs with additional call detail. The Commission reasonably found that, under the existing rule, all parties involved in the call get call detail *except* the PSP. *Second Payphone Reconsideration Order*, ¶12. As APCC explained in an ex parte submission:

²⁶ There are at least four options that may be considered by IXC's: (1) treat all calls as completed when they are "answered" by an end user or a reseller switch; (2) treat calls answered by an end user or reseller switch as completed unless the reseller specifically contracts with the PSP to directly compensate the PSP; (3) estimate completed calls based on a proxy such as duration; and (4) utilize sampling techniques to establish call completion ratios to be applied to calls for purposes of payphone compensation. See AT&T, WorldCom and Global Crossing Petitions for Clarification and/or Reconsideration of the Second Payphone Reconsider Order, filed May 29, 2001.

The PSP will have no way of knowing whether [a] particular call was paid for, nor if it was, by which IXC of the 1300 or so IXCs that are billed. The PSP is not provided by any IXC with a list of calls the IXC is paying for. Thus, the PSP cannot compare [its own call records] to a list of calls for which the PSP has been paid to know either the short falls in payment or which calls need to be pursued for collection.

APCC Narrative at 5-6.²⁷ Carriers currently must compile call detail information in order to comply with their payment obligations under the existing rules. The Commission is simply requiring carriers to provide that same information to PSPs – information that PSPs have requested and that carriers have unreasonably denied since the onset of per-call compensation.²⁸ In complaining about the administrative task of delivering this information to PSPs, Sprint completely disregards the existence of centralized clearinghouses both for carriers like Sprint (such as National Payphone Clearinghouse and Billing Concepts), and for PSPs, such as APCC Services, Inc., PPON, G-5, and DataNet Services which aggregate compensation collection on behalf of hundreds of individual PSPs and provide a means of greatly reducing any carrier's "burden" of reporting to PSPs the basic call detail underlying compensation payments.

Sprint's concern about the burden of monitoring "direct contractual arrangements" between switch-based resellers and PSPs is inexplicable. Facilities-based IXCs already must

²⁷ The Commission therefore shifted tracking and paying responsibility to facilities-based carriers, who "are in a far better position to track the calls and provided adequate information to PSPs to ensure that they are compensated for every compensable call." *Id.*, ¶16. Given that the PSP needs call detail information in order to check the accuracy of payments, and that the IXC is in a position to provide that information, it was entirely appropriate for the Commission to require that the information be provided.

²⁸ Sprint has expressly refused to voluntarily provide such information to PSP collection agents, contending that it is not required by Commission rules. *See* Letter from Richard Juhnke of Sprint Communications, LP to Edward Modell, counsel for APCC (December 8, 2000) (Exhibit 15 to this Opposition).

CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2001, a copy of the foregoing Reply Comments of the American Public Communications Council on Petitions for Reconsideration/Clarification was delivered by first-class U.S. Mail, postage pre-paid to the following parties:

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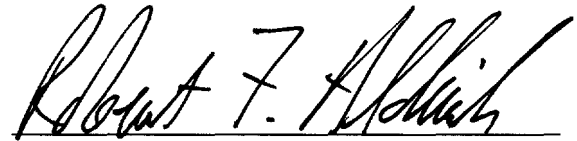
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